

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

5

10 ALABAMA CATFISH, INC.  
d/b/a HARVEST SELECT FARMS, LLC

And

CASE 10–CA–34246–001–0

15 PAMELA WITHERSPOON, An Individual

*Katherine Chahrouri, Esq.*  
for the General Counsel  
20 *Jay St. Clair, Esq.*  
for the Respondent

25

**BENCH DECISION**

**Statement of the Case**

30 **Lawrence W. Cullen, Administrative Law Judge:** This case was heard before me in  
Uniontown, Alabama on May 9, 2003, and I delivered a bench decision on that date.

35 I found Respondent Alabama Catfish, Inc., d/b/a Harvest Select Farm, LLC violated  
Section 8(a) (1), (3) and (4) of the National Labor Relations Act (“The Act”) by its unlawful  
failure and refusal to rehire employee Pamela Witherspoon because of her engagement in  
protected concerted activities in violation of Section 8(a)(3) and (1) of the Act and because of her  
resort to National Labor Relations Board (“The Board”) process in violation of Section 8(a)(4) of  
the Act.

40 My Bench Decision as corrected and amended with the issuance of this Decision in final  
form was delivered in accordance with the authority of Section 102.35 (a)(1) thereof. I certify  
the accuracy of, and attach hereto as “Appendix A” of my Bench Decision, the pertinent part of  
the trial transcript as corrected and amended, pages 110 to 125.

45

### Conclusions of Law

Based upon the entire record at the hearing, I found that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. Respondent violated Section 8(a)(3) and (1) of the Act because of the discrimination against Pamela Witherspoon by refusing to rehire her because of her participation in protected concerted activities and violated Section 8(4) and (1) of the Act by its refusal to rehire her because of her resort to Board process. These violations have affected and unless permanently enjoined will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

### The Remedy

I recommend Respondent be ordered to cease and desist from the foregoing violations of the Act and to make Pamela Witherspoon whole for any loss of pay or benefits she may have sustained from the date of January 29, 2003, when Respondent failed and refused to rehire her for the unlawful reasons stated above, until April 1, 2003, when it did rehire her. I find it is unnecessary to recommend that Witherspoon be instated to the position for which she was applying as Respondent rehired her as of April 1, 2003. Backpay shall be computed in the manner prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950) with interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987) at the “short term Federal rate” for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. Section 6621.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:<sup>1</sup>

### ORDER

The Respondent Alabama Catfish, Inc. d/b/a Harvest Select Farm, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to hire employees because of their engagement in protected concerted activities under the Act or because of their resort to Board process.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

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<sup>1</sup> If no exceptions are filed as provided by § 102.46 of the Board’s Rules and Regulations, the findings conclusions, and recommended Order shall, as provided in § 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, make Pamela Witherspoon whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination against her in the manner set forth in “the Remedy” section of this Decision, with interest.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful failure and refusal to hire her and within 3 days notify her in writing that this has been done and that this unlawful action will not be used against her in any way.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director of Region 10, may allow for good cause shown, provide at a reasonable place designated by the board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Uniontown, Alabama, location copies of the attached notice marked “Appendix B”<sup>2</sup>. Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 2, 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C.

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Lawrence W. Cullen  
Administrative Law Judge

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<sup>2</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading “**POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD**” shall read “**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.**”

APPENDIX A

110

5 1 complaint.  
2 THE COURT: All right. I’m going to, as I have advised  
3 you previously, enter a bench decision in this case, and we’ll  
4 take a brief recess while I get that together, and I would  
5 like to talk to the attorneys on both sides first.

10 6 (Off the record and reconvened.)

7 THE COURT: On the record.

8 Ladies and gentlemen, I’m going to issue a  
9 bench decision in this case, as I’ve indicated previously, and  
10 that’s in the case of  
15 11 Alabama Catfish, Inc., d/b/a Harvest Select Farm and Pamela  
12 Witherspoon, an individual, Case No. 10–CA–34246-001-0.

13 Initially, this case involved allegations of Sections  
14 8(a)(1), 8(a)(3) and 8(a)(4) of the Act, with respect to  
15 alleged discrimination against Pamela Witherspoon, an  
20 16 individual.

17 It’s been alleged in the complaint and is  
18 admitted, and I find that at all times material herein,  
19 Respondent, an Alabama corporation, with an office and place  
20 of business in Uniontown, Alabama, herein called its facility  
25 21 has been engaged in the business of catfish farming,  
22 processing, distribution and sales.

23 Further, that during the past year, which period is  
24 representative of all times material herein, Respondent has at  
25 its Uniontown, Alabama facility, received in excess of \$50,000

30

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## APPENDIX A

111

1 — in income derived from the sale of goods and  
 2 interstate commerce to points outside the State of Alabama,  
 5 3 and that at all material times herein, Respondent has been an  
 4 employer engaged in commerce within the meaning of Section 2 (2)(6)  
 5 and 7 of the Act.

6 It is further alleged and admitted, and I find that at  
 7 all material times the United Steelworkers of America,  
 10 8 AFL–CIO–CLC has been a labor organization within the meaning  
 9 of Section 2(5) of the Act.

10 Further, it is alleged and admitted that at all material times, the following  
 11 individuals held the positions set forth opposite their names  
 12 and have been supervisors of Respondent within the meaning of  
 15 13 Section 2(11) of the Act and agents of Respondent within the  
 14 meaning of Section 2(13) of the Act; Jerry Worthington,  
 15 President; Robert Lee, Plant Manager; Linda Lewis; supervisor.

16 It is alleged in the complaint that from January 30th,  
 17 2003 until March 31, 2003, the Respondent failed and refused  
 20 18 to rehire the charging party, Pamela Witherspoon and that the Respondent engaged  
 19 in this conduct because of the involvement of Charging Party  
 20 as a named discriminatee in an NLRB compliance proceeding in  
 21 the case of Southern Pride Catfish, 10–CA–28960, and further,  
 22 engaged in the conduct described above, because the named  
 25 23 employee assisted the union and engaged in concerted protected  
 24 activities, and to discourage other employees from engaging in  
 25 these activities.

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## APPENDIX A

112

1       It is alleged that by this conduct, the  
 2       Respondent — restrained and coerced  
 5       3       employees in the exercise of the rights guaranteed in Section  
 4       7 of the Act, by discriminating in regard to the hire and tenure  
 5       and the terms and conditions of employment of its employees;  
 6       thereby discouraging membership in a labor organization in  
 7       violation of Sections 8(a)(1) and (3) of the Act, and has  
 10       8       discriminated and is discriminating against employees for  
 9       filing charges and/or giving testimony under the Act, and that  
 10       Respondent has been therefore engaged in unfair labor  
 11       practices within the meaning of Section 8(a)(1) and (4) of the Act  
 12       .

15       13       The parties have entered into a joint stipulation of  
 14       facts, and under this joint stipulation, the correct name of  
 15       the Respondent has been amended to show that it is Alabama  
 16       Catfish, Inc., d/b/a Harvest Select Farm. It is stipulated  
 17       also that on March 22nd, 1996, the Regional Director for  
 20       18       Region 10 of the NLRB issued a complaint in Case 10–CA–28960  
 19       alleging that Southern Pride Catfish had committed a number of  
 20       unfair labor practices, including the wrongful discharge of  
 21       ten employees, Rosie Aaron, Shirley Aaron, Carie Hamilton,  
 22       Doria Lee, Barbara Lewis, Debbie Lewis, Regina Lewis, Bridget  
 25       23       May Witherspoon, Brenda Scott, and Pamela Davis Witherspoon.

24       It is further stipulated that Southern Pride Catfish  
 25       and Respondent are unrelated corporate entities.

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## APPENDIX A

113

1 On March 10, 1996, the Administrative Law Judge at the  
2 NLRB found in the Southern Pride case, that Southern Pride  
5 3 Catfish had committed multiple unfair labor practices,  
4 including the discharges of the ten employees named above.  
5 The NLRB adopted the ALJ's decision on June 30, 2000 at  
6 331 NLRB No. 81. On November 21, 2002, Region 10 of  
7 of the NLRB issued a compliance specification in Southern  
10 8 Pride Catfish, 10–CA–28960, setting a compliance hearing  
9 for January 23, 2003, in Uniontown, Alabama. The parties in that case  
10 reached a settlement on January 22, 2003, and backpay checks  
11 were distributed to the named discriminatees including Pamela.  
12 Witherspoon on February 10, 2003.

15 13  
14 In the instant case, Respondent hired Pamela  
15 Witherspoon on April 25, 1996. Respondent discharged her on April  
16 23, 1997 for excessive absenteeism. Respondent rehired  
17 Witherspoon on June 16, 1997, and terminated her for a second  
20 18 time on February 12, 2002 for excessive absenteeism. She was  
19 unemployed from the time of her discharge on February 12th,  
20 2002 until Respondent rehired her for a third time on April 1,  
21 2003.

22 Further, the following discriminatees from the Southern  
25 23 Pride case were hired by Respondent on the dates indicated. Doria  
24 Lee, August 18, 1997; Barbara Lewis, December 1, 1997; Debbie  
25 Lewis, April 22, 1998; Regina Lewis, February 2, 1999; Bridget

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## APPENDIX A

114

1 Witherspoon, April 25, 1996. Of the persons mentioned  
2 — in this paragraph, only Bridget Witherspoon remains employed by  
5 3 Respondent through the present date.

4  
5 Respondent was hiring employees to work at its catfish  
6 processing facility in Uniontown, Alabama during the period  
7 November 2002 through March 2003. During that period of time,  
10 8 approximately 80 people were hired.

9 General Counsel's Exhibit 3 is a true and correct copy  
10 of a subpoena in Southern Pride Catfish, 10–CA–28960, which  
11 was served on Robert Lee on January 9, 2003.

12 General Counsel's Exhibit 4 is a true and correct copy  
15 13 of a subpoena in Southern Pride Catfish, which was served on  
14 Robert Lee on January 17th. These subpoenas were for a  
15 hearing set for January 23rd, 2003.

16 The General Counsel called Pamela  
17 Witherspoon, the alleged discriminatee in this case. She  
20 18 was rehired and is currently employed by Respondent  
19 since April 1 of the year 2003.

20  
21 Pamela Witherspoon, applied on January 2, 2003 for  
22 re–employment. At the time, she was with her mother Mary Ann  
25 23 Davis, who also applied. They went together, and spoke to a lady in the  
24 front office, and to Robert Lee, who is the plant manager, and  
25 Pamela Witherspoon testified

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## APPENDIX A

115

1 that Lee said she could not get her job back because there was  
2 a subpoena to go to court. This involved the Southern  
5 3 Pride Catfish case. On that date, which was January 2, 2003,  
4 she filed an application. She testified that Robert Lee  
5 told her he could not give her her job back because  
6 of the Southern Pride case. That is the case in  
7 which she was listed as a discriminatee

10 8 .

9 She returned on January 29<sup>th</sup>, a second time, because a  
10 representative of the company had called her grandmother, and  
11 left a message with her grandmother for her and her mother,  
12 Mary Ann Davis to come to the plant. They did so on that  
15 13 date, and waited in the breakroom, and met with Robert Lee,  
14 who told Mary Ann Davis and Pamela Witherspoon to go to the office, and told  
15 Mary Ann Davis that he could hire her back, —  
16 notwithstanding her prior unsatisfactory attendance.  
17 Mary Ann Davis actually had been let go during  
20 18 a lay off, although she acknowledged on the stand,  
19 that she was told at that time, that her attendance  
20 was a factor in the decision to lay her off.  
21 Mary Ann Davis started working the next day on January 30<sup>th</sup>.

22

25 23 During this conversation on January 29<sup>th</sup> Lee

24

25

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5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

116

1 did not mention any prior attendance problem of Witherspoon and gave no  
2 other reason, for not hiring her other than her involvement  
5 3 in the Southern Pride Catfish case.

4 She had gone to Robert Lee several times in  
5 the year 2002 to obtain her job back, and he had told her that  
6 he would help to get her job back.

7 On January 2, 2003 when both ladies had applied,  
10 8 a not hiring sign, which is normally posted on the  
9 door of the facility was not up, indicating that  
10 there was hiring going on at that time, and the  
11 Respondent has stipulated it was in fact hiring during that  
12 time period.

15 13 At the initial meeting on January 2nd, Lee told Witherspoon that  
14 the subpoena was the reason Respondent would not hire her back. I find  
15 that particular testimony is not  
16 credible, because the subpoena itself was dated on the 9th,  
17 which would be after the date of the January 2nd meeting.

20 18 I do find, however, that it is likely that there was an  
19 indication from Lee that he could not hire her because of this  
20 particular case, as the legal proceedings in this case were  
21 well known throughout this small community in  
22 Uniontown.

25 23 Witherspoon testified that two weeks before the second  
24 conversation, Lee had told her that she would not be hired  
25 because of her union and her lawsuit.

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5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

117

1 In the first instance, only the subpoena was mentioned  
2 , according to her testimony. Here again, I do not credit this  
5 3 specific reference to the subpoena. In the second meeting,  
4 that's on the 29th, both the lawsuit and the union were mentioned.  
5

6 Corine Davis, the grandmother of Pamela Witherspoon  
7 testified that she received a call in January 2003, asking for  
10 8 Pamela Witherspoon and her mother, Mary Ann Davis, to come in to  
9 the company to apply for work. Shortly thereafter, Pamela Witherspoon  
10 returned and told Ms. Davis that Mary Ann Davis had been  
11 hired, but that they would not hire Pamela Witherspoon back.

12 The mother of Pamela Witherspoon, Mary Ann Davis  
15 13 testified. She is now currently employed with the Respondent,  
14 and was a reluctant witness, and expressed some fear as to  
15 her job security, if she testified in this case. She testified that she had  
16 been laid off during a lay off, that she had been late,  
17 and was told that that had something to do with her lay off.

20 18 In January 2003, she put in her application, and she was  
19 with Pamela at the time they gave the applications to the lady  
20 at the desk, at the employer's facility.

21 The lady asked why she had been fired or laid off, and  
22 she told her because of her attendance. She asked Pamela the  
25 23 same question, and she also said it was because of her  
24 attendance, and the lady took the information.

25 .

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5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

118

1 Davis testified that when they later received the call to  
2 return to the plant, they talked to a lady named Geneva, and  
5 3 then went in the breakroom to talk to Robert Lee, and then he  
4 came in and told her, Mary Ann Davis, that he could hire her  
5 back, but he could not hire Pamela back because of something  
6 at Southern Pride.

7 Davis started the next day on January 30th. Davis  
10 8 testified further that in late February 2003, Linda Lewis, her  
9 supervisor told her that she did not think it was fair that  
10 Pamela had not been hired because of the Southern Pride case.

11 Linda Lewis was called by the Respondent, and she  
12 denied that she had had a conversation with Davis as to why  
15 13 Pamela Witherspoon had not been rehired by the company, and  
14 denied that she had made any mention of or had any  
15 discussion with respect to Southern Pride. She testified  
16 further, that she had never been told not to hire Pamela  
17 Witherspoon.

20 18 Robert Lee, who is the general manager of the plant,  
19 testified that there are normally about 150 to 175 employees  
20 at the plant. He testified that there is about a 25 percent  
21 plus or minus turnover from time to time. The records in this  
22 case indicate that 80 employees of approximately 150 were  
25 23 rehired between November of 2002 and early 2003,  
24 which would indicate an approximate 50  
25 percent turnover during that period of time.

30 R & S TYPING SERVICE – (903) 725–3343  
5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

119

1 Lee testified that several times Pamela Witherspoon tried to get  
2 her job back since she'd been terminated, and he told her he  
5 3 could not hire her back because of her attendance problems.

4 He acknowledged the conversations with Pamela Witherspoon in  
5 January 2003, and testified that during the first conversation,  
6 Pamela asked for her job back and he said no because of her  
7 absentee and tardiness problems, and that she left.

10 8 On the second occasion, he had the subpoena on his  
9 desk, and this would have been on the 29th of January, and  
10 Pamela came in the breakroom and she asked for her job back,  
11 and she came in the office, and he told her that he had tried  
12 her out two times, and she had been deficient with respect to  
15 13 her attendance problems.

14 The subpoena was on his desk, and he  
15 testified that she said, I see you have a copy of the Southern  
16 Pride thing, and he acknowledged that he had. And she asked  
17 again for her job back, and he told her that he is the only  
20 18 one that she can talk to, and that she is not getting her job  
19 back.

20 He testified further that on a third occasion in January, he  
21 received a telephone call from Pamela Witherspoon, and the  
22 same conversation took place. She asked for her job back, and he told her no  
25 23 once again, and that was the end of the conversation.

24 He also testified that on the second occasion,  
25 Witherspoon had told him she was going to get some money from

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5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

1 the Southern Pride Catfish case, but that she still wanted her  
2 job back.

5 3 He acknowledged on the stand that he has on a number of  
4 occasions fired employees for attendance problems and then  
5 later brought them back. From time to time  
6 there has been a relationship with Southern Pride to the  
7 extent that when the company does not have a sufficient  
10 8 amount of catfish to process, they have purchased catfish from  
9 Southern Pride as well as from other catfish processors.

10 He acknowledged further, that as a result of the  
11 subpoena, he was going to be required to go to court and  
12 testify, and bring a number of documents, and this  
15 13 would involve missing work. He contended that Pamela  
14 Witherspoon had failed on two occasions to properly perform  
15 her duties and show up to work on time, and  
16 this was the reason he decided not to rehire her.

17  
20 18 Analysis. There are two alleged violations  
19 of the Act, and that is an alleged 8(a)(1)  
20 and (3), with respect to discrimination because of union or  
21 concerted activities, and 8(a)(1) and (4) with respect to the  
22 interference of Board process.

25 23 With respect to the 8(a)(1) and (3), I find that the  
24 General Counsel has established a prima facie case  
25 of a violation of the Act, by Respondent's

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5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

121

1 refusal to rehire Pamela Witherspoon.

2 Under Wrightline, a Division of Wrightline, Inc., 251

5 3 NLRB 1083, (1980) and 662 F2d 899, (1st Cir. 1981) cert

4 denied 455 U.S. 989 (1982), the General Counsel has the initial

5 burden one, to establish that the employees engaged in protected

6 concerted activities; two, that the Respondent had knowledge

7 of or at least suspicion of the employee's protected

10 8 activities; three, the employer took adverse action against

9 the employee; four, a nexus or link between the protected

10 concerted activities and the adverse action underlying motive.

11 Once these four elements have been established, the

12 burden shifts to the Respondent, to prove by a preponderance

15 13 of the evidence that it took the adverse action for a

14 legitimate non-discriminatory business reason.

15 In FES 331 NLRB 9(2002), enfd, 301 F3d 83

16 (3<sup>rd</sup> Cir. 2002), the Board considered a

17 discriminatory refusal to hire, whereas in the instant case,

20 18 this was a refusal to rehire, but the same analysis

19 applies in this case.

20 And that is, in accord with the allocation of burdens

21 in Wrightline, that the Respondent was hiring or had concrete

22 plans to hire at the time of the alleged unlawful conduct,

25 23 that the applicants had experience or training relevant to the

24 announced or generally known requirements of the positions for

25 hire, or in the alternative, that the employer has not adhered

R & S TYPING SERVICE – (903) 725–3343

30 5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

122

1 uniformly to such requirements, or that the requirements  
2 themselves were pretextual or were applied as a pretext for  
5 3 discrimination, and three, that anti–union animus contributed  
4 to the decision not to hire the applicants. Once this is established  
5 the burden will shift to the respondent to show that  
6 it would not have hired the applicants, even in the absence  
7 of their union activity or affiliations. If the respondent asserts that the  
10 8 applicants were not qualified for the positions  
9 it was filling, it is the respondent’s burden to show at the  
10 hearing on the merits, that they did not possess the specific qualifications  
11 the position required. In the instant case, I find that the  
12 alleged deficiency, of Witherspoon, was not the reason,  
15 13 she was not rehired.

14  
15 . I find that under Wrightline the Respondent has failed  
16 to meet its burden of showing that it would not have hired her  
17 in the absence of her concerted activities.

20 18  
19 Further, with respect to the 8(a)(4) allegation, in  
20 General Services, 229 NLRB 940, 1977, the Board held that the  
21 purpose of Section 8(a)(4) is to ensure effective  
22 administration of the Act, by providing immunity to  
25 23 individuals who initiate unfair labor practice charges, or  
24 assist the Board in proceedings under the Act. In 1972, the Supreme  
25 Court issued its decision in NLRB

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5485 S. LIVE OAK ROAD; GILMER, TX 75644



## APPENDIX A

1 v Robert Scrivinger d/b/a AA Electric Company, 405 US  
 2 117, and stated that Section 8(a)(4) applied not only to  
 5 3 filing charges and testifying at a formal hearing, but also  
 4 included affidavits given during an investigation, and also as  
 5 in this case, appearing or being called to testify but not  
 6 testifying at a Board hearing, and being subpoenaed.

7 In the instant case, I find that although the  
 10 8 Respondent had a number of reasons, with respect to the  
 9 attendance problems for not rehiring Witherspoon, and  
 10 although it had rehired her in the past, and had other  
 11 employees who had been rehired, although they may have been  
 12 involved in the Southern Catfish case, that they had not taken  
 15 13 any action upon, in the instant case, it did take a look at  
 14 her particular attendance problems, and she was called in for  
 15 an interview after she had applied on January 2nd,  
 16 indicating that there was an interest in re-employing her.

17 Now, whether or not that was a perfunctory matter remains  
 20 18 perhaps at issue in this case, and I make no determination on  
 19 that.

20 However, I do credit her and I find particularly compelling  
 21 the testimony of Mary Ann Davis, who has a pecuniary interest  
 22 as a current employee, and who displayed a reluctance to  
 25 23 testify in this case, notwithstanding that it was her daughter  
 24 whose win or loss situation in the case was at issue. I  
 25 believe that Davis was a truthful witness. I believe that with

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 5485 S. LIVE OAK ROAD; GILMER, TX 75644

## APPENDIX A

1 respect to Witherspoon, although there was some confusion  
 2 on dates, that she did hear the comments from Mr. Lee, and  
 5 3 this may have resulted from a reluctance on the part of the  
 4 company to once again get involved with someone who had been  
 5 involved in this Southern Pride Catfish case, and who probably  
 6 by all accounts was a marginal candidate for re–employment,  
 7 but I find that the 8(a)(3) and 8(a)(4)  
 10 8 discriminatory motives were what tipped the scales in determining  
 9 that she not be rehired. I find that the disaffection of the company  
 10 with the situation of seeing her as somebody who had been  
 11 fired in the past, and who was now involved in the Southern Pride Case and  
 12 the subpoena matter where the company was  
 15 13 going to be called upon to present evidence and  
 14 bring its records, is something that the company had  
 15 determined it did not want to deal with.

16 As Respondent contends, no action was taken  
 17 against current employee, Bridget Witherspoon, who had been  
 20 18 listed on that list also. In this case, involving Ms. Pamela  
 19 Witherspoon, although there was a situation where the Respondent had a  
 20 reason, a legitimate reason for not re–employing her, I  
 21 do not believe that this is the reason she was not  
 22 re–employed. I believe it had to do with the Southern  
 25 23 Pride Catfish case, and that had to do with the 8(a)(3)  
 24 aspect, her being listed as a union participant, having been  
 25 discriminated against because of her

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APPENDIX A

125

1 union activities, and with regard to the Section 8(a)(4) allegation because  
 2 she had resort to Board process by being called as a witness, with the possibility of  
 5 3 testimony, although she ultimately was not called upon to  
 4 testify, because that case was settled.

5 So therefore, under all of those circumstances, I find  
 6 that the company did violate Section 8(a)(1), (3) and (4) of  
 7 the Act, and I will issue a recommended remedy and the  
 10 8 appropriate order upon return to my office, and upon receipt  
 9 of the transcript in this case, which is normally ten days,  
 10 I will certify that portion of the transcript, on which I  
 11 have dictated this decision, with some possible modifications  
 12 or changes or any corrections or additional case citations

15 13  
 14 but you can be assured that this will be the decision that I  
 15 will issue, with minor modifications or correction.

16 Is there anything further before I close the hearing in  
 17 this case?

20 18 MS. CHAHROURI: No, Your Honor.

19 MR. ST. CLAIR: Nothing from the Respondent.

20 THE COURT: The hearing is now closed.

21 (Whereupon, the proceedings were concluded at 2:00 p.m., May  
 22 9, 2003.)

25 23 \* \* \* \* \*

24

25

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APPENDIX A

126

1 CERTIFICATE

2 This is to certify that the attached proceedings before the

5 3 National Labor Relations Board, Region 10,

4 Case Name: Harvest Select Farm, LLC

5 Case No.: 10–CA–34246

6 Location: Uniontown, Alabama

7 Date Held: May 9, 2003, and

10 8 was held according to the record, and that this is the

9 original, complete, and true and accurate transcript that has

10 been compared to the reporting or recording, accomplished at

11 the hearing, that the exhibit files have been checked for

12 completeness and no exhibits received in evidence or in the

15 13 rejected exhibit files are missing.

14 \_\_\_\_\_

15 DATE CONTRACTOR

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APPENDIX B

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board has found that we violated the Federal labor law. And has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

**WE WILL NOT** refuse to rehire you or otherwise discriminate against you because of your engagement in protected concerted activities under the Act or because of your resort to the National Labor Relations Act.

**WE WILL NOT**, in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

**WE WILL**, make Pamela Witherspoon whole for any loss of wages and benefits she may have sustained as a result of the unlawful discrimination, with interest.

**WE WILL**, remove from our files all references to the unlawful discrimination against Pamela Witherspoon and will inform her in writing that we have done so and that **WE WILL NOT** use the unlawful refusal to rehire her against her in any way.

**ALABAMA CATFISH, INC., d/b/a HARVEST SELECT FARMS, LLC**  
(Employer)

**Dated** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

233 Peachtree Street, NE, Harris Tower, Suite 1000, Atlanta, GA 30303–1531  
(404) 331–2896, Hours: 8:00 a.m. to 4:30 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (404) 331–2877

